

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5218 OF 2005

Mr.Rajeshkumar D.Mehara ..Applicant
Vs.
Mr.Chandrabushan M.
Chaube & Anr. ..Respondents

Ms.Shraddha Y.Mohite Advocate for Applicant
Mr.B.H.Mehta, A.P.P. for the State

CORAM: SMT.V.K.TAHILRAMANI, J.
DATE : AUGUST 19, 2005

P.C.

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State.

2. The applicant is seeking quashing of proceedings relating to Criminal Case Nos.1175/SS/2005, 1176/SS/2005 and 1177/SS/2005 pending before the Court of learned M.M. 21st Court, Bandra, Mumbai. In the said cases, process has been issued against the applicant under Section 138 of Negotiable Instruments Act. The learned advocate for the applicant submitted that the learned Magistrate committed an error in issuing process and the said process deserves to be set

aside. If the process issued against the applicant is set aside, the proceedings in respect of the applicant, would come to an end.

3. The applicant had preferred application before the learned Magistrate for recalling of process. The said application came to be rejected by the learned Magistrate in view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal and others [(2004) 7 S.C.C. 338]**. In view of the decision of the Supreme Court in the case of Adalat Prasad (supra), no fault can be found with the order of the learned Magistrate rejecting the application for recall of process, hence, I am not inclined to interfere with the order of the learned Magistrate rejecting the application for recall of process.

3. However, for the reasons recorded in my order dated 13th June, 2005 in W.P.No. 213 of 2005 and dated 21st June, 2005 in Cri.Application No.550 of 2005, I am of the opinion that the applicant has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in

my view, it would be appropriate that the applicant prefers a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the applicant to prefer the necessary revision before the concerned Sessions Court. The learned advocate for the applicant makes a statement that the necessary revision will be preferred within four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of four weeks. It is made clear that the revision shall be preferred in respect of the order of the learned Magistrate issuing process and not in respect of the order of the Magistrate rejecting the application for recall of process.

5. On the necessary revision being preferred by the applicant before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties.

6. Criminal Application is disposed of.

[V.K.TAHILRAMANI, J.]